THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.19580 OF 1995

DATED: 29-08-2006

BETWEEN

G.V. Kalyana Murthy,
S/o. Laxminarasimha Charyulu,
Occ. Secondary Grade Assistant,
R/o. Eluru.

...PETITIONER

AND

The District Educational Officer,
West Godavari District at Eluru
and another.

...RESPONDENTS

ORDER:

This writ petition has been filed seeking a writ of mandamus to declare that the petitioner is appointed as Secondary Grade Assistant in the second respondent school from 20.06.1994 as approved by the first respondent in his proceedings Rc.No.166/A-3/94 dated 28.10.1994 and that he is entitled for all the benefits accrued to the said posts including seniority, salary etc. from the date of his appointment and to declare the action of the respondents in not paying his salary for the period from 20.06.1994 to 23.04.1995 though his appointment was approved by proceedings dated 28.10.1994,
as illegal and arbitrary.

Learned counsel for the petitioner submits that pursuant to the notification issued in Andhra Jyohti, the petitioner applied for the post of Senior Grade Assistant in the second respondent – school, as he was postgraduate in Commerce, as he underwent training in Bachelor of

Education (B.Ed.) and as his name was also registered in the District Employment Exchange. Pursuant to the interview attended before the Staff Selection Committee constituted as per G.O.Ms.No.1 Education (P.S.2) Department dated 01.01.1994 of the second respondent – school, the petitioner was declared selected in its meeting held on 13.03.1994 and the second respondent by his proceedings dated 16.03.1994 appointed the petitioner as Secondary Grade Assistant with usual allowances in the vacancy caused due to transfer of Smt. M. Kamala Kumari to another school under the same management with prior approval of the District Educational Officer.

In the order of the second respondent it is stated that the appointment is made as against the vacancy reserved for OC and the appointment is subject to approval of the District Educational Officer. Thereafter, the petitioner joined the second respondent school on 20.06.1994 at 9 AM. It is stated that the then District Educational Officer – M. Venkateswarlu, who was in full additional charge of the said post, by order dated 28.10.1994 approved the appointment of the petitioner, who was duly selected by the Staff Selection Committee in its meeting held on 13.03.1994 with effect from 20.06.1994.

It is stated that the salary of the petitioner has not been paid from 20.06.1994 to 24.03.1995 on the ground that the regular District Educational Officer issued another order approving the appointment of the petitioner on 24.03.1995 and therefore, the petitioner is not entitled to salary from 20.06.1994 to 24.03.1995.

Learned Government Pleader for school education appearing for the respondents submits that, in fact, the said M. Venkateswarlu was only in Full Additional Charge but he was not the regular District Educational Officer. It is stated that though M. Venkateswarlu was placed in Full Additional Charge of the post of District Educational Officer vide order of the Director of School Education dated 09.08.1994, the District Collector, West Godavari District,

by his order dated 19.08.1994 placed Sri M. Lakshmi Reddy, in full additional charge of the post of District Educational Officer, West Godavari relieving Sri M. Venkateswarlu, who was in full additional charge of the said post. It is not in dispute that the said Venkateswarlu challenged the order of the District Collector dated 19.08.1994 before APAT in O.A.No.5876 of 1994 and the tribunal passed interim order dated 19.10.1994 suspending the order of the District Collector dated 19.08.1994 for a period of two weeks or until further orders whichever is earlier. Thereafter, Sri M. Venkateswarlu was in full additional charge of the post of District Educational Officer after 19.10.1994 till the regular District Educational Officer took charge. It is also not in dispute that Sri M. Venkateswarlu during his period as District Educational Officer by order dated 28.10.1994 approved the appointment of the petitioner with effect from 20.06.1994. It is also not in dispute that the Director of School Education vide order dated 27.10.1994 appointed the regular District Educational Officer, who assumed the charge on 30.10.1994 and subsequently approved the appointment of the petitioner with effect from 25.03.1995. The learned Government Pleader further submits in view of the aforesaid approval of the appointment of the petitioner with effect from 25.03.1995,
the petitioner was not paid salary from 20.06.1994 to 24.03.1995.

I am of the opinion that the said assumptions and presumptions of the department is nothing but a violation of the orders of the tribunal as admittedly the order of the District Collector dated 19.08.1994 was suspended continuing Sri M. Venkateswarlu in full additional charge of the post of the District Educational Officer as appointed by the order of the Director of School Education dated 09.08.1994. However, the order dated 09.08.1994 issued by the competent authority was not at all modified or revised. Therefore, the tribunal rightly rejected the order of the District Collector, who is not a competent authority to appoint Sri M. Lakshmi Reddy in the place of

Sri M. Venkateswarlu. Therefore, it cannot be said that the order passed by Sri M. Venkateswarlu dated 28.10.1994 approving the appointment of the petitioner from the date of his assuming charge i.e. 20.06.1994 as illegal and arbitrary to any rules and regulations.

In view of the aforesaid facts and circumstances of the case, I am of the opinion that denying salary to the petitioner is illegal and arbitrary and nowhere in the order of the District Educational Officer dated 24.03.2005 it is mentioned that the appointment of the petitioner is approved with effect from 24.03.2005 and not from 20.06.1994.

Having regard to the facts and circumstances of the case, the writ petition is accordingly allowed. There shall be no order as to costs.

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V. ESWARAIAH, J

August 29, 2006
DSK